IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2086 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE R.P.DHOLAKIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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NARENDRA @ BABLU BHOJUMAL TAHELRAMANI SINDHI

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 2086 of 2002

MR HR PRAJAPATI for Petitioner No. 1

MR MR PRAJAPATI for Petitioner No. 1

MR SJ DAVE, AGP for Respondent No. 1-3

CORAM : MR.JUSTICE R.P.DHOLAKIA

Date of decision: 10/05/2002

ORAL JUDGEMENT

The petitioner has been detained under the provisions of Gujarat Prevention of Anti-Social Activities Act, 1985 (hereinafter referred to as `the Act of 1985') by the order dated 28-3-2001 passed by the

Police Commissioner, Surat City and he has been declared as bootlegger.

2. It is now well settled that unless the activities of a person as bootlegger has disturbed the maintenance of public order, he cannot be detained under the Act. Reliance is placed on a decision of the case of Piyush Kantilal Mehta Vs. Commissioner of Police, Ahmedabad & Ors. reported in AIR 1989 SC 491.

3. I have heard learned advocate for the petitioner and also perused the material on record. Affidavits filed on behalf of the respondent Nos.1 and 2 are ordered to be taken on record. Though several contentions were raised by the learned advocate for the petitioner in the petition, he has restricted his arguments on the point of non-supply of documents. According to learned advocate for the petitioner, the detenu through his advocate by way of a representation dated 6-2-2002 demanded to supply certain documents, but the authority has not supplied the same and, therefore, it is a point which is required to be taken into consideration and detenu may be released.

4. It has been held in a judgment reported in AIR 1982 S.C. 696 in the case of Mohd. Zakir Vs. Delhi Administration and Ors. at head note as under:

> "Detention-Documents relied on by authorities not supplied with grounds of detention-Detention is illegal."

It has been further held by the Apex Court as under:

> "It is manifest that the question of demanding the documents is wholly irrelevant because it is the constitutional mandate which requires the detaining authority to give the documents relied on or referred to in the order of detention pari passu the grounds of detention in order that the detenu may make an effective representation immediately instead of waiting for the documents to be supplied with."

It is the duty of the authority to supply copy of the statements and documents with the detention order.

5. Here in this case, though advocate of the detenu has demanded copies of several statements and documents by representation dated 6-2-2002 to the State Government, some of them were not been supplied to the detenu. Though affidavits were filed on behalf of the respondent

Nos.1 and 2, no cogent and satisfactory reason has been shown in the affidavits for the same. In of this, there is infraction of safeguards provided under the provisions of Art.22(5) of the Constitution of India and the petitioner has been deprived of knowing the grounds and making effective representation against the order of detention. Since the petitioner succeeds only on this point learned advocate for the petitioner does not press any other points.

5. The petition is allowed. The impugned order of detention dated 28-3-2001 passed against the detenu is hereby quashed and set aside. The detenu Narendra Bablu Bhojumal Tahelramani Sindhi is ordered to be set at liberty forthwith, if not required in any other case. Learned advocate for the petitioner assures that the detenu will stay away from Ahmedabad for a period of fifteen days from the date of release. Rule is made absolute accordingly with no order as to costs. Direct service is permitted.

(R.P.DHOLAKIA,J.)

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